

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

Darrell Lynn Jones, et al,

Plaintiffs,

v.

Five Below, Inc., et al.,

Defendants.

CIVIL ACTION NO. 3:22-cv-00215

July 7, 2022

SECOND AMENDED NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 and paragraph 3 of the Court’s Order for Conference and Disclosure of Interested Parties (Dkt. 2), Defendant Edgewell Personal Care, LLC (“Edgewell”) files this Second Amended Notice of Removal of the above-entitled action to the United States District Court for the Southern District of Texas, Galveston Division, from the 56th Judicial District Court of Galveston County, Texas (“State Court”) where the action is now pending and states:

1. Edgewell exercises its rights under the provisions of 28 U.S.C. §§ 1332, 1441, and 1446 to remove this case from the State Court where this case is pending before the 56th Judicial District Court of Galveston County, Texas under the name and style of *Darrell Jones v. Five Below, Inc.*, Cause No. 22-CV-0902.

2. Pursuant to 28 U.S.C. § 1441(a), any civil action brought in a State court of which the district courts of the United States have original jurisdiction may be removed by

the defendant to the district court of the United States for the district and division embracing the place where such action is pending.

3. This is a civil action that was instituted in the State Court, and has not been tried. On or about May 19, 2022, Plaintiffs filed their original complaint in the State Court. A copy of the State Court docket sheet, all pleadings that assert causes of action, all answers to such pleadings, all process and orders served on Defendants, an index of matters being filed and list of all counsel of record are attached hereto as **Exhibit 1**. As set forth below, Edgewell received a copy of the summons and Original Petition on May 25, 2022, and its initial Notice of Removal was timely pursuant to 28 U.S.C. § 1446(b).

SUBJECT MATTER JURISDICTION

4. This Court has original jurisdiction of this action under 28 U.S.C. § 1332(a)m, which provides, “[t]he district courts have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different states.”

5. It is facially apparent from Plaintiffs’ Original Petition that the amount in controversy exceeds \$75,000.

6. All plaintiffs allege at least four violations of the Texas Deceptive Trade Practices Act, as well as claims of common law fraud, misrepresentation, and negligence.

7. All plaintiffs allege physical pain and suffering in the past and future, mental anguish in the past and future, physical impairment in the past and future, and disfigurement in the past and future. Pet. at 7.

8. All plaintiffs allegedly incurred medical, hospital, and pharmaceutical expenses in the past and allege they will reasonably incur such charges in the future. *Id.*

9. In addition to the past and future expenses and damages, Plaintiffs request treble damages and attorneys' fees. Pet. at 5.

10. Alleging mental anguish, treble damages, and attorney's fees in addition to economic damages under the Texas Deceptive Trade Practices Act is enough to make it facially apparent from a plaintiff's petition that the claims are likely above \$75,000. *Whitmire v. Bank One, N.A.*, No. H-05-3732, 2005 WL 3465726, at *3 (S.D. Tex. Dec. 16, 2005).

11. Plaintiffs' Original Petition fails to provide a binding stipulation or affidavit that would limit recovery to \$75,000.

12. Additionally, complete diversity exists between Plaintiffs and Defendants.

13. For purposes of diversity of citizenship under 28 U.S.C. § 1332, Plaintiffs are all citizens of Texas, the state in which they allege they reside in their Original Petition.

14. Defendant Edgewell Personal Care, LLC is a limited liability company formed under the laws of the state of Delaware and maintains its principal place of business in the state of Connecticut.

15. Playtex Products, LLC is the sole member of Edgewell Personal Care, LLC.

16. Playtex Products, LLC is a limited liability company formed under the laws of the state of Delaware and maintains its principal place of business in the state of Connecticut.

17. Edgewell Personal Care Brands, LLC is the sole member of Playtex Products, LLC.

18. Edgewell Personal Care Brands, LLC is a limited liability company formed under the laws of the state of Delaware and maintains its principal place of business in the state of Connecticut.

19. Edgewell Personal Care Company is the sole member of Edgewell Personal Care Brands, LLC.

20. Edgewell Personal Care Company is incorporated under the laws of Missouri and maintains its principal place of business in the state of Connecticut.

21. Defendant Five Below, Inc. is incorporated under the laws of the commonwealth of Pennsylvania and maintains its principal place of business in the commonwealth of Pennsylvania.

22. Defendants are citizens of Connecticut, Delaware, Missouri, and Pennsylvania through incorporation and their principal place of business. None are citizens of Texas, the state of citizenship for Plaintiffs. Accordingly, diversity of citizenship is established under 28 U.S.C. § 1332.

PROCEDURAL COMPLIANCE

23. Pursuant to 28 U.S.C. § 1446(b), a Notice of Removal must be filed within 30 days after the receipt of the summons and Petition. Edgewell received a copy of the summons and Petition on May 25, 2022.

24. Edgewell filed its original Notice of Removal on June 21, 2022. Therefore, its removal was timely.

25. Edgewell filed its Amended Notice of Removal on June 24, 2022, within its thirty-day removal period.

26. Pursuant to this Court's Order, Dkt. 2, Edgewell may file an amended notice of removal within 20 days of the Order, July 13, 2022, to show the citizenship of all limited liability entities. As such, this Second Amended Notice of Removal is timely.

27. The United States District Court for the Southern Division of Texas, Galveston Division, includes Galveston County, Texas, in which the State Court action is now pending.

28. No previous application has been made for the relief requested herein.

29. Defendant Five Below, Inc. consents to removal, evidenced by the signature of counsel for Defendant Five Below, Inc. on this Amended Notice of Removal.

30. All Defendants have properly joined and consented to removal as required under 28 U.S.C. § 1446(b).

31. Pursuant to the provisions of 28 U.S.C. 1446(a) and Local Rule LR81, a copy of the State Court docket sheet, all pleadings that assert causes of action, all answers to such pleadings, all process and orders served on Defendants, a list of all counsel of record are attached as **Exhibits 1-11**. An index is contemporaneously filed as well.

32. On the date set forth below, a copy of this notice is being served on Plaintiffs' attorney of record. On the same date, a copy of this notice is being filed with the clerk of the 56th District of the state of Texas.

WHEREFORE, Defendant Edgewell hereby removes this case from State Court, where it is now pending, to this Court.

Dates: July 7, 2022

Respectfully submitted,

By: /s/ Andy Soto

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record in accordance with the Federal Rules of Civil Procedure on July 7, 2022:

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